

A Private Property Approach to Children

Work-in-Progress

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Abstract

How does varying the rights to children held by parents, political authorities, and the children themselves affect parental and child behavior? What child outcomes are desirable? To answer these questions, this paper engages in a value-free inquiry into the effects of varying parental/children's rights regimes. Particularly, a complete parental rights regime is postulated. Its consequences are teased out and compared to a system of no parental rights. Ultimately, this paper strives to present a consistent theoretical property rights approach to children.

Keywords: *Children, Children's Rights, Property Rights*

JEL Codes: J12, J13, K36

Introduction

“When the critics of the law-and-economics movement want an example of its excesses they point to what is popularly known as the “baby selling article,” which Dr. Elisabeth Landes and [Richard Posner] wrote...The article is usually, although incorrectly, described as advocating a free market in babies,” (Posner 1987, p. 59). These are the opening words of Richard Posner’s 1987 article, “The Regulation of the Market in Adoptions.” Unfortunately, he is correct that many critics of law and economics, and free market-oriented economics in general, cite the “baby market” as a reason to dismiss economic arguments entirely. A recent example of this can be found in Imam (2022, pp. 133-135) who denounces Rothbard’s proposal¹ of a “flourishing free market in children” as “aberrant” and a showcase of “faulty logic.” In this paper, this market approach to children is extended to investigating exclusive rights of the parent over the child and drawing out economic and policy implications of a regime of exclusive and complete parental rights.

Aside from the proponents of the “free market in children,” such as Posner and Rothbard, economist Steven N. S. Cheung has explored a more extreme case: children as property. Cheung (1972) investigates a period in Chinese history where parental rights were complete and children were treated as mere property. The following paper is written in the spirit of Cheung (1972).

What is meant by a “complete private property approach to children” will be explained in the first section in addition to other preliminary remarks. The second section will describe ideal types of parental rights regimes: complete parental rights, complete children rights, and complete state rights. The economics of each of these regimes and the transitions between them will be

¹ Murray Rothbard, *The Ethics of Liberty*, (New York City and London: New York University Press 1998), 103.

described. In the fourth section, some public policy implications will be drawn out. Lastly, this article will conclude with some discussion of implications and potential future research.

“I Brought You Into this World, and I Can Take You Out...”

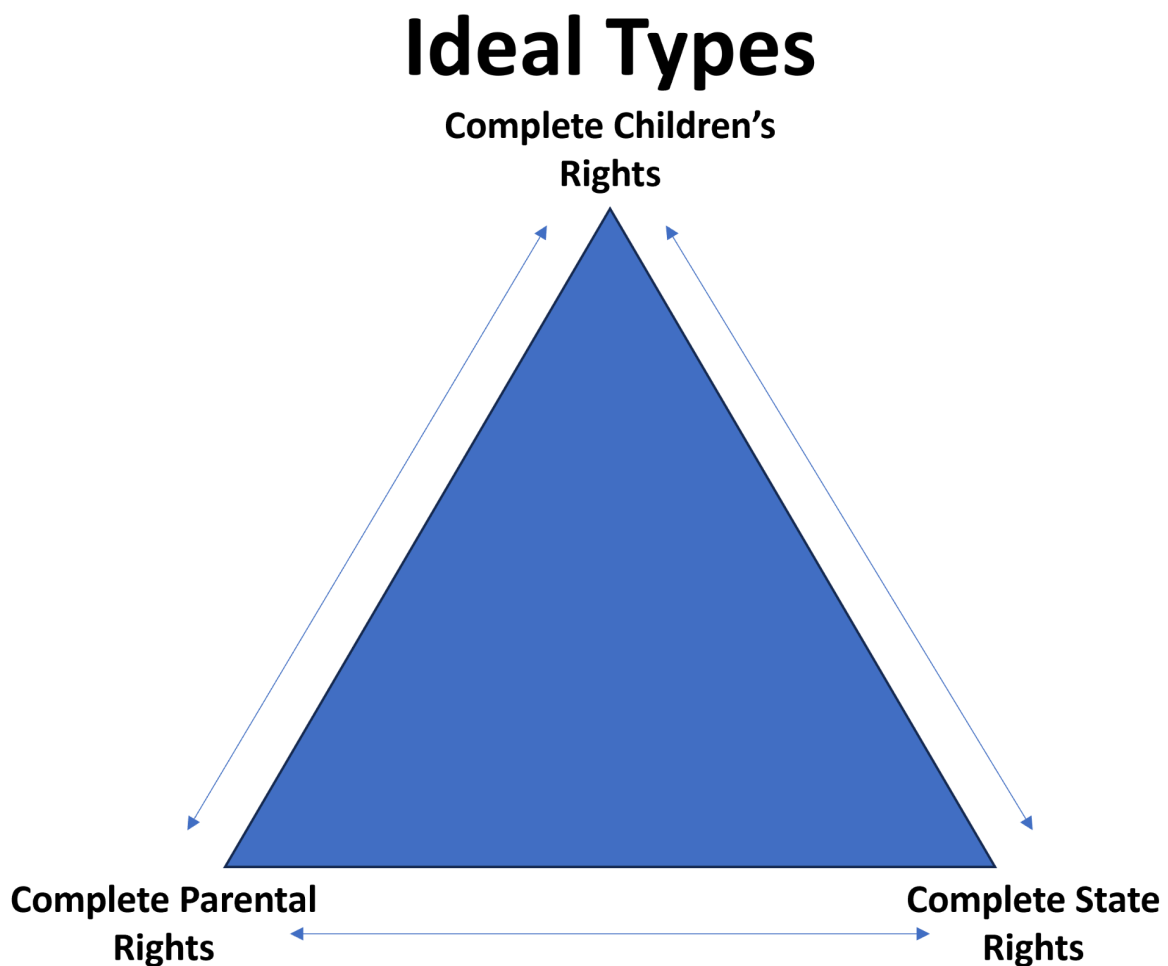
This common saying, usually stated by angry or disappointed parents, unintentionally captures the *ethos* of the complete parental rights position. Complete parental rights, or exclusive parental rights, means that parents have a right to “extract both pecuniary and non-pecuniary income from them,” (Cheung 1972). In other words, the benefits of children are completely privatized by the parents. This implies that the parent’s right to dispose of the child according to the parent’s ends is not limited by anything endogenous to the child, such as the child’s will or the will of a third party.

Notice how this definition removes any reference to ethics. This article does not deal with the ethical question: “What parental rights regime should we have?” That question, though interesting, is not what is being done here. Property, in this article, is being used in a value-free (*wertfrei*), purely economic way. The relationship between the parent and the child in this complete parental rights regime or any other regime that will be discussed is of a purely *de facto* nature, rather than *de jure*.² Even though weight will be placed on how political institutions define rights or what the public policy implications will be, the treatment of rights in paper will be purely non-ethical. Children under the complete parental rights regime may be compelled to

² *De facto* refers to a state that is factual whereas *de jure* refers to an ideal state which is either mandated by law or morality. *De facto* relations are important for economics whereas *de jure* relations are important for ethics. The two can intersect. For example, actors can try to make *de facto* reality reflect *de jure* reality. A good example of this is libertarians who desire for everything to be privatized. They recognize that complete privatization is not *de facto*, but because of *de jure* relations they seek to make privatization *de facto*. In this article, the relations between parents, children, and the state are considered purely *de facto* and when elaborating on the ideal types, the parents, children, or the state are assumed to have achieved *de facto* ownership of the children by some means regardless of whether that ownership is right or wrong or legal or illegal.

follow the orders of the parent for any number of reasons whether it be from institutional, environmental, or social constraints.

Loosening these constraints expands the *de facto* rights of the child (or the state) and creates a mixed system of imperfect parental/children/state rights. Every modern regime is a mixed system to some extent. Some have more weight on parental rights and others have more weight on children's rights. With this in mind, a triangular space can be constructed to help visually represent the spectrum of rights to children.



The above triangle represents a space in which there are three extremes and an infinite number of potential rights configurations in between. Starting at complete parental rights on the far left (no

relation to left-wing politics), loosening parental rights by easing constraints faced by the child or hardening certain constraints faced by the parent, the regime moves upward and to the right. If the state or some other third party does not exist, then the movement of the regime stays along the parent-children's rights axis.

This paper, essentially, is about transaction costs.³ A parent, when choosing to have a child, would prefer to privatize more of the benefits of having a child than less. Due to this fact that economic agents maximize their satisfaction, parents would prefer regimes where they are able to control the child. This power may be exercised in a variety of ways, such as giving children all the rights and privileges they have in modern society, or they may put their child to work in the family store. The bottom line is that the complete parental rights regime is an expansion of the options presently available to parents, rather than a restriction of their options, which would harm their welfare. So, when transaction costs are zero (when property rights of the parents are secure), the regime will be considered a complete parental rights regime. When transaction costs increase, a transition to an imperfect regime will occur.

Now for the formation of ideal types, the first of which to be covered is the complete parental rights regime.

Ideal Types

What follows is an attempt at establishing ideal types of parental rights regimes. Movements from one regime to the other will be explained.

Complete Parental Rights

A complete parental rights regime is a system in which parents are capable of disposing of children however they wish. As defined above when discussing “exclusive” parental rights,

³ What is meant by “transaction costs” here is the cost of protecting property. This is more or less the definition used by Douglas Allen (1991).

this implies that the parents have a right to “extract both pecuniary and non-pecuniary income from them,” (Cheung 1972). The parents are capable of employing children in whatever production process they wish, and the children oblige the parent’s wishes either by compulsion or willingness. The parent’s right to the child is neither limited in the present or in the future. This implies that children are never emancipated, only manumitted by the parent. Furthermore, children are also alienable under such a system, meaning they can be transferred or sold to other parties. The point of alienability has been the central focus of the literature to this point (Landes and Posner 1978,⁴ Rothbard 1982 and 2002, Boudreaux 1995, D. Friedman 2000, A. Hall 2015, Block 2018).

Rothbard, however, summarizes alienability best, “Now if a parent may own his child (within the framework of non-aggression and runaway freedom), then he may also transfer that ownership to someone else. He may give the child out for adoption, or he may sell the rights to the child in a voluntary contract,” (Rothbard 1998), p. 103). However, under a complete parental rights regime, the so-called “non-aggression principle” is not respected with respect to the child, and the child is either incapable or unwilling to “runaway.”

Under this regime, parents have no positive obligations to care for their children. The typical “market for children” view includes the trading of not only rights to children, but the obligations associated with children as well, as Friedman (2000, p. 181) notes. The complete parental rights view disposes of positive obligations.

Andrew Cohen and Lauren Hall (Zwolinski and Ferguson 2022, p. 11) give proponents of this system the label of “propertarian.” This is in stark contrast to the stewardship or trusteeship⁵

⁴ Elisabeth Landes & Richard Posner, “The Economics of the Baby Shortage,” *The Journal of Legal Studies*, Jun., 1978, Vol. 7, No. 2 (Jun., 1978), pp. 323-348; Richard Posner, *The Economic Analysis of the Law*; Richard Posner, “The Regulation of the Market in Adoptions,” 1987, 67 *Boston University Law Review* pp. 59-72.

⁵ The stewardship or trustee view holds that the parent is a steward or trustee of the child until the child grows into a being capable of exercising their will. There may be differences in the way that each of the

view espoused by Rothbard (1998), Hoppe (2013, p. 27; 2015, p. 63), Block (2018, pp. 181-183), and Gordon (2021). Though many of those mentioned in this paper so far display elements of the propertarian view of children, no single modern political theorist or public policy expert, as far as this author can tell, holds this extreme view.

Examples of this system are imperfect; however, some notable periods of history proximate this ideal type. Cheung (1972) states that up into the early 1900s, the head of the family owned all family property, could sell their children into marriage or slavery, were excused in accidentally killing children in chastisement, and held claim to all monetary income from the family. Cheung (1972) also notes that “even after the establishment of the Chinese National Government in 1911, the liberation of property rights in children was gradual.” Cheung (1972) uses the property rights argument to explain the institution of foot-binding in China, stating that in order to prevent runaway brides,

[T]he girl was subjected to foot-binding at about the age of five years of age. To the groom’s parents, the physical handicap thus imposed was more than counterbalanced by the girl’s lessened ability to run away. They would thus be willing to pay a higher market price for the bride with bound feet, and this served as a signal for the bride’s parents to bind her feet long before she was pledged through a marriage contract.

So, in order to privatize children, parents physically damage the child; thereby, making the child more desirable in the market for marriage. This may at first glance seem exploitative of the child, but keep in mind that markets for brides can potentially enable women of lower stature to improve their placement in society. The purchaser of the bride prefers the bride more than the

cited authors express this view, and some may even have sharp disagreements, but they all more or less fit this position.

bride price, and the seller prefers the bride price over the bride. The bride is therefore transferred from the hands of someone who disprefers her to someone who prefers her. While the final station of the wife may end up being worse than the starting point because the marriage does not necessarily require the consent of the wife, the fact that markets can be a mechanism by which women in dire situations can be transferred into the estate of someone who prefers her over a bride price remains an unchallenged fact.

Probably the most well-known case are the *paterfamilias* of ancient Rome. Crook (1967) describes the *paterfamilias* as such:

Roman *potestas* over agnatic descendants not emancipated, including those adopted, and including the wife *in manu*, lasts during the lifetime of the *paterfamilias*. In the gubernatorial category it includes the power of life and death, with exposure at infancy, sale, chastisement, noxal surrender, and the right to force your married children to divorce (though probably not to force them to marry against their will). In the category of property it includes full legal ownership of everything the family has, full power of alienation, and the full power to dispose of the whole by will.

The Roman *paterfamilias* were clearly weaker in regard to parental rights than Chinese society, but both examples are a far cry away from most modern regimes.

Aside from China and Rome, primitive societies also treat children as property to a great extent. For example, in the research of the present author, the family structure of the Inuit (Eskimo) people at one point had elements of the complete parental rights ideal type, although it seems to vary from tribe to tribe (Birket-Smith 1971, pp. 159-160). Ancient Israel also seems to express elements of this regime as well; Abraham nearly sacrificing his son Isaac (Genesis 22:2),

the commandment to “honor your father and your mother,” and (Exodus 20:12), moral regulations on the selling of one’s daughter as a slave (Exodus 21:7) seem to suggest that the property rights view of children was not foreign to Abraham, Israel, or the other people of the region.

The complete parental rights perspective is clearly not the historical norm. From primitive to modern times, parental authority has been displaced by state regulations and children asserting their authority as autonomous people. We will now describe the complete children rights view.

Complete Children Rights

Ironically, Rothbard, though an expositor of child markets, also has elements of the children rights view in his work. Children have runaway rights in Rothbard’s view (1998, p. 103). The parent has no right to compel the child to stay. This is a manifestation of the complete children rights view. Children are legally separable from the parent’s property and have rights as any other free person. Any right that the parent had over the child in the complete parental rights view is instead held by the child. The child is emancipated at birth and has the right to withhold and can enter into agreements and contracts. These are the logical implications of the complete children rights view.

A more extreme logical conclusion of this view is the anti-natalist view. This view holds that the act of conception violates the children’s rights: children never consent to being born. As a result, any act of conception comes with positive obligations; parents are legally or morally required to pay damages to children for the act of bringing them into the world. These payments may take the form of caring for them at a young age and later maybe monetary payments. This extreme view essentially reverses the roles that were established in the complete parental rights

regime; the parents are essentially reduced to slaves of the children rather than the children being slaves to the parents.

This extreme regime is seemingly untenable. It prohibits all acts of reproduction, and when reproduction does occur, the parent is subjected to the whims of an infant that can neither speak nor communicate in any meaningful way. At these early stages of life, it is clear that the infant is not the rights-bearer being that they cannot meaningfully interact with the world. Another entity is either standing up for the rights of the child or trying to subject the child and parent to authority themselves. That is, people other than the parents (natural or adoptive), are entering into the equation. When it comes to other property rights issues, this group is called criminals, or in other words, people who violate rights or claims to resources. When it comes to the topic of children, a major violator of the parent's rights, outside of kidnappers and other common criminals, is the government, or as this paper will call it: the state.⁶

Complete States Rights

This can alternatively be referred to as the socialist regime of parenting. Essentially, the state owns children. Any rights that the parents had is held by the state. However, the role of the state can be different. Though it is true that states may establish schools and daycares to watch over and raise children, the parents may receive the duty of doing so. Consequently, the parents are tasked with raising the children for the state, heaping on the parents' positive legal obligations to feed, wash, clothe, and house the children. Just like the complete children rights regime, this regime is hard to imagine, but not entirely implausible. Socialist countries that reduce every man to the level of slave can classify as having this regime.

⁶ For the purposes of this paper, there is no need to employ an ethical definition of the state. The state in this case is just another criminal organization in the sense that it organizes to attack exclusive property claims. The state is merely a criminal organization which monopolized or is attempting to monopolize criminal activity in a geographical region. There may be shortcomings with this definition, but for the purposes of this paper, it works.

So far, little in the way of economics has been done. Let's return now to the complete parental rights regime and examine how changing the configuration of rights changes behavior.

Implications

Relative to a regime that emphasizes children or state rights more, the complete parental rights regime allows the parents to take full advantage of any pecuniary or non-pecuniary benefit that comes with the production of children. A. Hall (2015) adequately sums up the advantage of a mere market for children. The baby shortage will diminish, the wealth of birth mothers could increase due to the potential sale of parental rights, there would be fewer abortions, infant health would improve, child abuse would decline, there would be fewer children in foster care, and the price of fertility treatments would fall (A. Hall 2015). All of these effects would be amplified in a complete parental rights regime.

In a complete parental rights regime, parents can sell their offspring at any point, and the parent has claim to any income or assets that the child may come to possess at any point in the child's life. A transition to such a regime would greatly increase the tradeoff faced by potential child abusers, neglectors, and aborters more than a simple market for parental rights.

Furthermore, given the parent's increased time horizons over the child due to an infinite age of emancipation, the time preference of the parent would fall tremendously. Rather than "consume" more of the child prior to emancipation, the parent would be more inclined to maintain and look after the child so that they can take advantage of the new potential income from the child's later life. Given that children, especially young children, have high time preferences due to biological constraints on cognitive development (Hoppe 2001, p. 4), a parent who is more forward-looking than the child is vital. It is obvious that parents must protect their children, especially during infancy, but when parents who have a greater claim to the future

revenue of the child are put in charge of stewarding, the child is in better hands than if they had to rely on the goodness of the parent's heart.

Furthermore, economic motivations will spur parents to manumit their children. The high costs of maintaining children and the threat of runaways will encourage parents to manumit (free) their children (Tullock 1961). If the parent desires someone to take care of them in their old age, it might be best to free the child from parental authority earlier rather than later as a sign of goodwill. Kinsella (2006) notes that manumission would likely occur in such a regime.

Increasing the transaction costs faced by the parent alters their incentives. Every incentive described thus far would be diminished as transaction costs enter the equation. Why? Destabilizing property rights decreases the expected return from an action.

If children assert their rights and there are no social taboos associated with doing so, parents may lose authority over their children and the capacity to extract income from them will diminish. However, state intervention has the potential to pale in comparison to children asserting their rights.

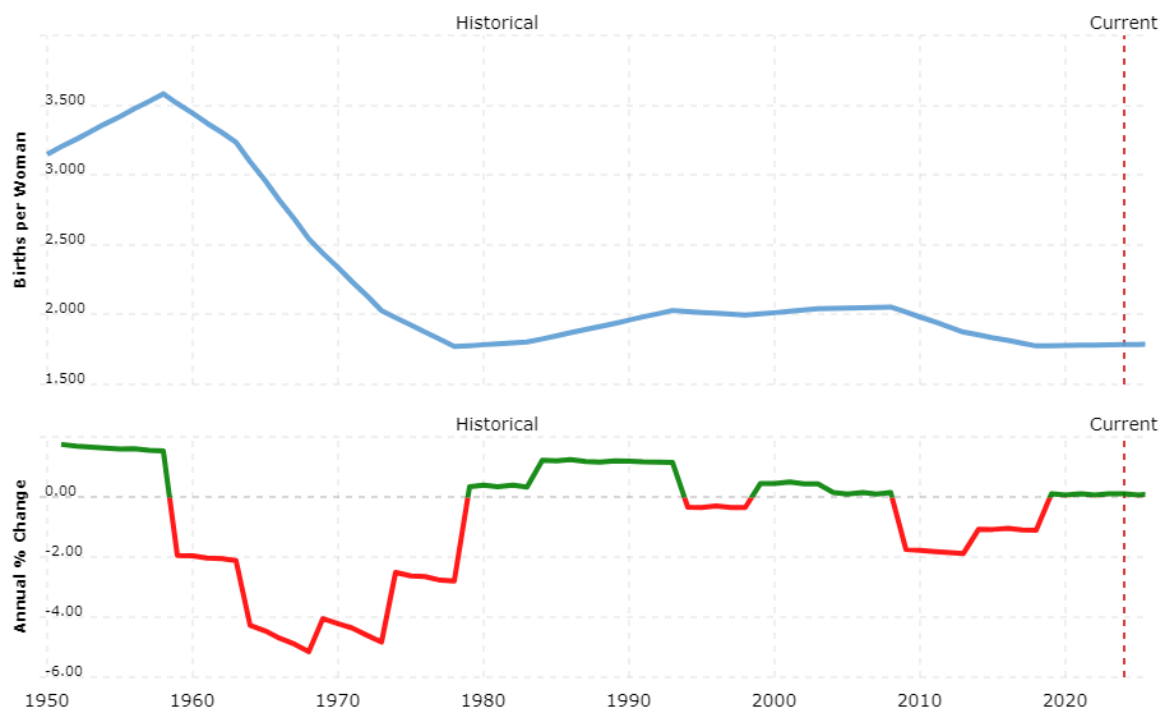
As noted previously, state intervention heaps positive obligations on parents and diminishes the satisfaction derived from having children. In response, parents will abuse children more, have less kids, care less about the health of children, etc. Furthermore, it makes parents bureaucrats if not ripping children away from parents altogether and placing the children under the care of some bureaucrat, such as a state-run orphanage. Anderson and Tollison (1985) explain how placing slaves into the hands of bureaucrats that do not derive direct revenue from the slaves worsens the treatment of slaves. Likewise, children will be made worse off when their parents are reduced to mere bureaucrats or the children are transferred into the care of a bureaucrat unrelated to them.

Another effect to note is that as the government restricts the capacity of parents to extract pecuniary revenue from children, parents will start to extract more non-pecuniary income, potentially increasing all kinds of abuse.

Public Policy Implications

This paper is partly inspired by the calls of rightwing politicians, conservatives, and libertarians for the government to pass regulations, restricting how parents can raise their children. Sarrouf (2023) targets the parent's rights argument, calling for government policy to be more prudent rather than erring on the side of the rights of parents or children. Katy Faust, in her book *The Before Us: Why We Need a Global Children's Rights Movement*, attempts to reorient the debate about the family by focusing on children's rights, rather than parental rights. All of this philosophizing, however, will go nowhere without economic reasoning. Will enhancing children's rights at the expense of parents using the means of the state enhance the welfare of children and parents? Perhaps children will, on the margin, be protected, but parents will not be benefitted, and as a result, the practice of child bearing will falter further and fall.

Faust and Manning (2021, pp. 162-163) complain about the commodification of children. They have a point in that there is a massive industry, which they call "Big Fertility," profits off of selling sexless baby making methods, such as in-vitro fertilization and surrogacy. Contrarily, it may be commodification that can save the family and increase falling fertility rates.

U.S. Fertility Rate 1950-2024⁷

Fortunately, there is some hope. Argentinian President Javier Milei, then candidate, caused some uproar for entertaining the idea of legalizing the market for children (Seevers 2023). Though he walked back on this remark, it is good to see that such proposals are being covered in the media. On the other hand, the market for children has fallen out of vogue with libertarians, and it is something that many people more or less believe, but are unwilling to seriously propose.

Following from the argument here, there is nothing stepping in the way of the state from creating an agency that polices extreme cases of child abuse. Most people do not want to see children harmed, so it is safe to concede that perhaps such an organization should exist; however, even if it is assumed that the agents running this agency are good-intentioned (which might be a large assumption), there is still the risk of altering the expectations faced by parents. The

⁷ "U.S. Fertility Rate 1950-2024," Macrotrends.

existence of such a government authority would make parents relatively less certain about the future of family policy. They will think to themselves, “Will this agency start policing more than it should?” If so, they may extract more out of their children in the present. In other words, the existence of such agencies fosters a higher transaction cost environment which lowers the expected payoffs of having children.

Conclusion

It is important to note that this paper is not advocating for any particular parental rights regime despite the author showing favor toward a regime more in favor of parental rights. This economic analysis should be considered whenever a policymaker considers changing family policy or else, they may risk making parents and children worse off.

Furthermore, the property rights perspective of parenting in this paper, though not totally unique to this paper, can be applied to understand historical parental rights regimes such as the kind referenced here.

References

- Anderson, Gary M., and Robert D. Tollison. 1985. “Life in the Gulag: A Property Rights Perspective.” *Cato Journal* 5, no. 1 (Spring/Summer): 295-301.
- Becker, Gary S. 1991. *A Treatise on the Family: Enlarged Edition*. N.p.: Harvard University Press.
- Block, Walter. 2018. *Defending the Undefendable II: Freedom in All Realms*. N.p.: Ludwig Von Mises Inst.
- Boudreaux, Donald J. 1995. “A Modest Proposal to Deregulate Infant Adoptions.” *Cato Journal* 15, no. 1 (Spring/Summer): 117-135.
- Cheung, Steven. 1972. “The Enforcement of Property Rights in Children, and the Marriage Contract.” *The Economic Journal* 82, no. 326 (June): 641-657.

- Crook, John. 1967. "Patria Potestas." *The Classical Quarterly* 17, no. 1 (May): 113-122.
- Faust, Katy, and Stacy Manning. 2021. *Them Before Us*. N.p.: Post Hill Press.
- Friedman, David D. 2000. *Law's Order: What Economics Has to Do with Law and Why It Matters*. N.p.: Princeton University Press.
- Gordon, David. 2021. "The Problem with "You Own What You Make."" Mises Institute.
<https://mises.org/library/problem-you-own-what-you-make>.
- Hall, Abigail R. 2015. "An Argument for "Selling" Babies | Abigail R. Hall." The Beacon.
<https://blog.independent.org/2015/04/22/an-argument-for-selling-babies/>.
- Holman Bible Publishers, ed. 2013. *NKJV Large Print Compact Reference Bible, Black Bonded Leather*. N.p.: B&H Publishing Group.
- Hoppe, Hans-Hermann. 2001. *Democracy: The God that Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order*. N.p.: Routledge.
- Hoppe, Hans-Hermann. 2013. *A Theory of Socialism and Capitalism*. N.p.: Ludwig Von Mises Institute.
- Hoppe, Hans-Hermann. 2015. *A Short History of Man: Progress and Decline*. N.p.: Ludwig von Mises Institute.
- Imam, Jacob F. 2022. *Toward a Catholic Theology of Money*. N.p.: University of Oxford.
https://ora.ox.ac.uk/objects/uuid:c1dbc396-a8de-49ec-9f0c-3bfd8e89f4c8/download_file?file_format=application%2Fpdf&safe_filename=Toward_a_Catholic_Theology_of_Money_Submitted.pdf&type_of_work=Thesis.
- Kinsella, Stephan. 2006. "How We Come to Own Ourselves." Mises Institute.
<https://mises.org/library/how-we-come-own-ourselves>.
- Landes, Elisabeth M., and Richard A. Posner. 1978. "The Economics of the Baby Shortage." *The Journal of Legal Studies* 7, no. 2 (June): 323-348.
- "Libertarianism. The Family, and Children." 2022. In *The Routledge Companion to Libertarianism*, edited by Matt Zwolinski and Benjamin Ferguson. N.p.: Routledge.

Posner, Richard. 1987. "The Regulation of the Market in Adoptions." *Boston University Law Review* 59.

Posner, Richard A. 2003. *Economic analysis of law*. N.p.: Aspen Publishers.

Rothbard, Murray N. 1998. *The Ethics of Liberty*. N.p.: NYU Press.

Rothbard, Murray N. 2000. *Egalitarianism as a Revolt Against Nature, and Other Essays*. N.p.: Ludwig von Mises Institute.

Sarrouf, Tom. 2023. "The Pitfalls of the Parents' Rights Argument." Anchoring Truths.

https://www.anchoringtruths.org/the-pitfalls-of-the-parents-rights-argument/#_msocom_1.

Seevers, Benjamin. 2023. "Javier Milei and Selling Children." Seevers Insights.

<https://seeversinsights.substack.com/p/javier-milei-and-selling-children>.

Tullock, Gordon. 1961. "The Economics of Slavery." *American Journal of Economics and Sociology*.

"U.S. Fertility Rate 1950-2024 | MacroTrends." n.d. Macrotrends. Accessed February 1, 2024.

<https://www.macrotrends.net/countries/USA/united-states/fertility-rate>.